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MEMORANDUM

DATE: September 14, 2021

TO: Board of Supervisors

FROM: Matthew Kiedrowski, Deputy County Counsel

SUBJECT: Supplemental Memorandum Regarding Appeal of Coastal Permit Administrator Approval of Boundary Line Adjustment B_2017-0043

This item was initially heard by the Board of Supervisors on July 20, 2021. The matter was continued to September 14, 2021, for counsel to return to the Board with additional review of whether the proposed boundary line adjustment was improper piecemealing pursuant to the California Environmental Quality Act ("CEQA"), as well as with a proposed form of written decision for the Board's use in taking action on the appeal.

As noted in prior staff reports for the appeal, at the same time the applicant applied for the subject boundary line adjustment, the applicant also applied for a separate major subdivision (S_2017-0003) of the parcels in question. The applicant later chose to move forward with the boundary line adjustment first, in advance of moving forward with the subdivision application.

The two existing parcels subject to the boundary line adjustment are APN 069-320-01 ("Lot A"), which is 10.85± acres in size, and APN 069-320-02 ("Lot B"), which is 10.86± acres in size. The boundary line adjustment would (1) increase the size of Lot A to approximately 11.3 acres and make Lot A entirely subject to the County's Inland Zoning Code, and (2) decrease the size of Lot B to approximately 10.3 acres and make Lot B entirely subject to the County's Coastal Zoning Code.

The proposed subdivision is only proposed for Lot A and proposes the creation of 11 total parcels. At present, Lot A is generally zoned RR1 (Rural Residential, 40,000 square-foot minimum parcel size) under the Inland Zoning Code, with approximately 0.3 acres subject to the Coastal Zoning Code and zoned RR5 (Rural Residential, 5 acre minimum parcel size). The Inland RR1 zoning district has a minimum parcel size requirement of 40,000 square feet, as provided in Policy DE-14 of the General Plan and Section 20.048.025(A) of County Code. If the applicant were to utilize only the approximately 10.55 acres of Lot A in the Inland Zone for a subdivision, the applicant would have the ability to subdivide Lot A into 11 parcels. The Inland Zoning acreage is approximately 459,558 square feet, which, when divided by the required 40,000 square-foot lot size, would allow for 11 parcels, one of which would also include the additional Coastal Zoning acreage (0.3± acres).

To summarize: whether or not the proposed boundary line is approved, the applicant would still be able to subdivide Lot A into 11 parcels. Note that if the subdivision was applied for without the boundary line adjustment, it would be subject to the following additional finding pursuant to County Code section 20.524.025(E):

"A land division or boundary line adjustment shall not result in a parcel having more than one (1) zoning district designation, not including combining district designation(s), if such designation would adversely affect environmental resources or agricultural use of the property."

The above analysis provides the necessary background for a review of piecemealing or improper segmentation of a project. While not raised as an issue as part of the appeal of the Coastal Permit Administrator's decision, this topic was raised at the July 20, 2021, hearing.

CEQA's concept of a project description is broad and has been broadly construed by the courts, and the term project is defined by the CEQA Guidelines as including the whole of an action, which has the potential for resulting in either a direct or indirect physical change in the environment (14 Cal. Code Regs. 13578(a)). As such, a public agency may not segment or piecemeal a project into several pieces if the effect is to avoid full disclosure of environmental impact.

There are many cases that have reviewed what does and what does not constitute piecemealing. One of the primary cases is *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376 ("*Laurel Heights*"). *Laurel Heights* reviewed whether a project had multiple phases and found that future phases must be reviewed at the outset if the future phase is a reasonably foreseeable consequence of the initial project and the future phase will be significant because it will likely change the scope or nature of the initial project or its environmental effects. This test, in turn, has been reviewed by other cases.

One specific aspect of the test is whether the future phase is a "consequence" of the initial project. This includes whether the initial project is the first domino to fall in a causally related series of events to follow, whether the initial project practically compels completion of future phases, or whether the initial project is an integral part of a larger project (see *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35).

None of these is the case for the subject boundary line adjustment and potential subdivision. The boundary line adjustment is not the first step in a causally related series of events. The proposed subdivision, creating the same number of parcels, could have gone forward without the boundary line adjustment. The adjustment has independent purpose and utility from any potential subdivision in that it clarifies jurisdictional boundaries between the Inland and Coastal Zones. The adjustment of the boundary line to match that of the Coastal Zone boundary does not compel future subdivision or development of either parcel. Moreover, since a subdivision for the same number of parcels could have gone forward without the boundary line adjustment, the adjustment cannot be said to be an integral part of the proposed subdivision.

A proposed form of written decision for denial of the appeal and affirming the approval of the boundary line adjustment has been uploaded to this agenda item for the Board's consideration.